

§ 190.201

from 9:00 a.m. through 5:00 p.m., Eastern time, Monday through Friday, except Federal holidays. When the lines are not staffed, individuals may leave a recorded voicemail message, or post a message at the OPS website. All messages will receive a response by the following business day. The telephone number for the OPS information line is (202) 366-0918 and the OPS website can be accessed via the Internet at <http://ops.dot.gov>.

(2) RSPA's Office of the Chief Counsel (OCC) is available to answer questions concerning Federal pipeline safety law, 49 U.S.C. 60101 *et seq.* OCC may be contacted by telephone (202-366-4400) from 9:00 a.m. to 4:00 p.m. Eastern time, Monday through Friday, except Federal holidays. Information and guidance concerning Federal pipeline safety law may also be obtained by contacting OCC via the Internet at <http://rspa-atty.dot.gov>.

(b) *Availability of Written Interpretations.* (1) A written regulatory interpretation, response to a question, or an opinion concerning a pipeline safety issue may be obtained by submitting a written request to the Office of Pipeline Safety (DPS-10), RSPA, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. The requestor must include his or her return address and should also include a daytime telephone number.

(2) A written interpretation regarding Federal pipeline safety law, 49 U.S.C. 60101 *et seq.*, may be obtained from the Office of the Chief Counsel, RSPA, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. The requestor must include his or her return address and should also include a daytime telephone number.

[62 FR 24057, May 2, 1997; 62 FR 34415, June 26, 1997]

Subpart B—Enforcement

§ 190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator, OPS for achieving and maintaining pipeline safety. It also prescribes the procedures governing the

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exercise of that authority and the imposition of those sanctions.

(b) A person who is the subject of action pursuant to this subpart may be represented by legal counsel at all stages of the proceeding.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996]

§ 190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, RSPA, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 *et seq.*, or regulations or orders issued thereunder.

(b) Inspections are ordinarily conducted pursuant to one of the following:

(1) Routine scheduling by the Regional Director of the Region in which the facility is located;

(2) A complaint received from a member of the public;

(3) Information obtained from a previous inspection;

(4) Report from a State Agency participating in the Federal Program under 49 U.S.C. 60105;

(5) Pipeline accident or incident; or

(6) Whenever deemed appropriate by the Administrator, RSPA or his designee.

(c) If, after an inspection, the Associate Administrator, OPS believes that further information is needed to determine appropriate action, the Associate Administrator, OPS may send the owner or operator a "Request for Specific Information" to be answered within 45 days after receipt of the letter.

(d) To the extent necessary to carry out the responsibilities under 49 U.S.C. 60101 *et seq.*, the Administrator, RSPA or the Associate Administrator, OPS may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA or the Associate Administrator, OPS shall make every effort to negotiate a mutually

acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

(e) When the information obtained from an inspection or from other appropriate sources indicates that further OPS action is warranted, the OPS issues a warning letter under §190.205 or initiates one or more of the enforcement proceedings prescribed in §§190.207 through 190.235.

[45 FR 20413, Mar. 17, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998]

§ 190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS, may issue a Warning Letter notifying the owner or operator of the probable violation and advising the owner or operator to correct it or be subject to enforcement action under §§190.207 through 190.235.

[Amdt. 190-6, 61 FR 38403, July 24, 1996]

§ 190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder.

(b) A notice of probable violation issued under this section shall include:

(1) Statement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) Notice of response options available to the respondent under §190.209;

(3) If a civil penalty is proposed under §190.221, the amount of the proposed civil penalty and the maximum civil penalty for which respondent is liable under law; and

(4) If a compliance order is proposed under §190.217, a statement of the remedial action being sought in the form of a proposed compliance order.

(c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under §190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under §190.217, the respondent shall have the opportunity to respond under §190.209.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996]

§ 190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

(a) When the notice contains a proposed civil penalty—

(1) Pay the proposed civil penalty as provided in §190.227 and close the case with prejudice to the respondent;

(2) Submit written explanations, information or other materials in answer to the allegations or in mitigation of the proposed civil penalty; or

(3) Request a hearing under §190.211.

(b) When the notice contains a proposed compliance order—

(1) Agree to the proposed compliance order;

(2) Request the execution of a consent order under §190.219;

(3) Object to the proposed compliance order and submit written explanations, information or other materials in answer to the allegations in the notice of probable violation; or

(4) Request a hearing under §190.211.

(c) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-1, 53 FR 1635, Jan. 21, 1988; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998]